IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3310 OF 1991

1. The Cuffe Parade Sea Lord Co-operative Hsg. Society Ltd., a Society registered under the provisions of the Maharashtra Co-operative Societies' Act, 1960, under Registration No.BOM/ HSG/5227 of 15th October, 1977, having its registered office at 'Sea Lord Apartments', 117-Cuffe Parade, Bombay 400005.

2. Shri P.K.Rele Chairman of the Cuffe Parade Sea Lord Co-op. Hsg. Soc. Ltd., having its office at 'Sea Lord Apartments', 117-Cuffe Parade, Bombay 400 005.

3. Shri B.K.Mehra, Hon. Secretary of the Cuffe Parade Sea Lord Hsg. Society Ltd., having his office at 'Sea Lord Apartments', 117, Cuffe Parade, Bombay 400 005.

4. Shri D.F.Pocha Manager of the Cuffe Parade Sea Lord Hsg. Society Ltd., having his office at 'Sea Lord Apartments', 117, Cuffe Parade, Bombay 400 005 ..Petitioners.

Vs.

1. Shri Satishchandra Agarwal, residing at 1/38, Sea Lord, Cuffe Parade, Bombay 400005

2. District Forum, consti-)
tuted for the Dist. of)
Jodhpur under the)
provisions of the Consumer)
Protection Act, 1986)
having its office at D3)
Dak- Bunglow, near the)
Rotary Square, Jodhpur) ..Respondents.

Mr.Shyam Mehta, Advocate for the Petitioners.
None for the Respondents.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 13TH JANUARY, 2005

ORAL JUDGMENT : (Per S.J.Vazifdar, J.)

Petitioner No.1 is a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. Petitioner Nos.2 and 3 are the Chairman and Honorary Secretary and Manager of Petitioner No.1 respectively. Respondent No.1 is a member of the society.

2. The Petitioners have challenged the jurisdiction of Respondent No.2 District Forum, constituted for the District of Jodhpur under the provisions of the Consumer Protection Act, 1986 to proceed with a complaint filed by Respondent No.1 and to quash and set aside the proceedings and the complaint dated

14.10.1991.

3. The members of Petitioner No.1 are residents of a building "Sea Lord Apartments" on the plot of land leased by the Government of Maharashtra. Clause 7 of the memorandum of terms and conditions for the lease of the plot and clause 26 of the Government lease read thus :

> "7. The user of the building will be for private residence only."
>
> "26. The plot will be liable to be resumed by Government without payment of any compensation for breach of any of the above conditions."

4. Respondent No.1 by an agreement of sale dated 27.2.1987 agreed to purchase the shares in respect of Flat No.3 in the said building for the consideration and on the terms and conditions mentioned therein. By clause 5 Respondent No.1 expressly agreed to observe and abide by all the rules, regulations and bye-laws of the society. Thereafter, Respondent No.1 and the vendor of the said shares/flat filed the necessary forms and applications with the society. In each of them Respondent No.1 declared that he would abide by the

Bye-laws and Rules of the society as well as the resolutions that are passed by the General Body/Managing Committee of the society from time to time, in the course of administration and management of the affairs of the society. It is important to note that on 24.7.1987 the society passed a resolution admitting Respondent No.1 as member of the society *"together with and incidental thereto right to use and occupy for himself and his family members"* the said flat.

5. It is clear therefore beyond any doubt that Respondent No.1 was entitled to use the said flat for residential purposes and not for any commercial activity. In fact, a breach of this term could jeopardise the rights of the society under the said Government lease. A breach of this term would render the right of Respondent No.1 as a member of the society, to be forfeited.

6. The said complaint suppressed the aforesaid facts. Respondent No.1 thus deliberately mislead Respondent No.2. He falsely stated that it was agreed that Respondent No.1 would be entitled to use the flat for commercial purposes. Based on this false statement and a suppression of material facts,

Respondent No.1 alleged in the complaint that the Petitioners were illegally preventing him from using the flat for commercial purposes. It is alleged that this act of the Respondents shows illegal and improper business dealings and defective services. The complaint was therefore purported to be filed under the provisions of the Consumer Protection Act. Respondent No.1 sought interim orders against the Petitioners directing them to allow him to use the said flat in any manner whatsoever and preventing the Petitioners from refusing to allow him from using the flat for commercial purposes.

7. The aforesaid complaint was filed on 14.10.1991. The complaint discloses no urgency whatsoever. Nor does the complaint disclose any reasons for not serving a notice upon the Petitioners herein before making any interim applications. Surprisingly, on the day the complaint was filed itself, an application for interim orders was made and an order was in fact passed with far reaching consequences. The order proceeds on the basis that there is an agreement entitling Respondent No.1 to use the said flat for commercial purposes. Respondent No.1 therefore mislead Respondent No.2. By the said order Respondent No.2 permitted Respondent No.1 to

use the said flat for commercial purposes and directed the Petitioners to accept payment of municipal taxes and maintenance charges for the use for commercial purposes and to send the bills for the same to the Applicant at his Jodhpur address by registered post. The order further provides that in the event of the Petitioners herein not carrying out the said order they would individually be liable for simple imprisonment for three years and also fine of Rs.10,000/- under section 27 of the Consumer Protection Act.

8. The order was totally unwarranted. We are surprised that such an interim order was passed without notice to the Petitioners. There was no urgency whatsoever in the said application. The right of Respondent No.1, if any, could not have been prejudiced in any manner whatsoever had notice of the interim application been given to the Petitioners herein.

9. It is clear that no part of the cause of action of the dispute had arisen in Jodhpur. The entire cause of action has arisen in Bombay. The flat is situated in Bombay. The society is registered in Bombay. The bills have been raised in Bombay. The

effect of the impugned action of the society is in Bombay. The entire cause of action has arisen in Bombay. The filing of the complaint in Jodhpur was ex-facie mala-fide. None of the Petitioners herein i.e. the Opponents to the complaint reside or carry on business in Jodhpur. The complaint and the application for interim reliefs was also mala-fide, with a view to snatch the order behind the Petitioner's back.

10. Further, the dispute is clearly one between a member and the society and is therefore governed by the provisions of the Maharashtra Co-operative Societies Act. We are unable to see how the provisions of the Consumer Protection Act apply in the facts and circumstances of the present case.

11. In the circumstances, the Petition is made absolute in terms of prayers (a), (b) and (c).

Respondent No.1 shall pay the cost of this Petition to Petitioner No.1, fixed at Rs.15,000/- within four weeks from today.